

UNITED STATES DISTRICT COURT

for the

Northern District of Oklahoma

The Thomas L. Pearson and The Pearson Family ...

Plaintiff

v.

The University of Chicago

Defendant

Civil Action No. 4:18-cv-99-GKF-FHM

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Eurim Choi

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See EXHIBIT A

Place: CONNER & WINTERS, LLP
4000 One Williams Center
Tulsa, OK 74172-0148

Date and Time:

06/03/2019 10:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/22/2019

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

s/ P. Scott Hathaway

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

The Thomas L. Pearson and The Pearson Family Members Foundation, who issues or requests this subpoena, are:

P. Scott Hathaway, 4000 One Williams Center, Tulsa, OK 74172, shathaway@cwlaw.com, 918-588-5711

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Exhibit A

You are commanded to produce the following documents, electronically stored information, or objects at the time, date, and place identified in the Subpoena to Produce Documents, Information, or Objects:

- The original, unredacted copy of the document attached as Exhibit B, and all other documents and communications related thereto or obtained in connection therewith, including without limitation the “66 pages of internal University documents” referenced in the March 5, 2018 Chicago Maroon article titled *Pearsons, Who Pledged \$100 Million to UChicago, Want Their Money Back*;
- All documents related to or evidencing the manner in which you or The Chicago Maroon obtained the document attached as Exhibit B, including without limitation the identity of the author of Exhibit B and the location and circumstances under which the document was obtained.
- All communications with anyone at The University of Chicago or The Chicago Maroon regarding The Pearson Institute for the Study and Resolution of Global Conflicts and/or the dispute that is the subject of this litigation;
- All communications with any third parties regarding The Pearson Institute for the Study and Resolution of Global Conflicts and/or the dispute that is the subject of this litigation.

Pearson Grant Agreement

Default, Notice, Cure and Termination Timeline

June 30, 2017

June 5, 2017

- Pearsons send and University's receives **Notice of Default**
- If actual defaults existed and timely notice of them had been given¹, a cure period would commence:

- Cure periods for Founding Obligations alleged to have been breached:
 - For appointment of first Institute Director, cure period expires September 1, 2017
 - For creation of definitive operating plan and budget, cure period expires March 31, 2018
 - For creation of advisory council and appointment of Donor Members, cure period expires June 30, 2018
- Cure periods for maintenance obligations alleged to have been breached:
 - For provision of agreed-upon annual reports as described in Article 5, cure period expires 6 months after notice of default
 - No other maintenance obligations are alleged to have been breached
- Cure periods for other defaults is 1-year from receipt of Notice of Default

June 23, 2017

- University provides detailed response to Pearson Notice of Default

June 28, 2017

- Pearson counsel sends University notice that it will not pay 6/30 installment

June 29, 2017

- University counsel sends Pearsons notice that nonpayment will result in Donor default

June 30, 2017

- Due date for \$13M installment from Pearsons (or \$900,000 Current Funding Payment if a default existed)

July 1, 2017

- University sends Donor **Notice of Default** for nonpayment, and notice to Tom Pearson of his personal obligation to make payment (assuming no payment made by midnight on June 30):
- 90-day cure period starts for Donor payment;
- 30-day period starts for Tom Pearson to satisfy his personal payment obligation;

¹ For the sake of discussion, this timeline assumes that actual defaults exist and that timely notice of them has been given; we dispute both.

PRIVILEGED AND CONFIDENTIAL
DRAFT 6/30/2017

July 31, 2017

- 30-day period for Tom Pearson's personal payment expires;
- University to send additional **Notice of Default** with respect to Tom Pearson's payment obligation
- 90-day cure period starts for Tom Pearson personal payment;

September 1, 2017:

- Due date for hiring of final Pearson Chair faculty member;
 - University to inform the Donor if it misses this deadline; 1-year cure period starts
- Cure period for hiring of first Institute Director expires

September 28, 2017

- 90-day cure period for Donor payment default expires;
- University may thereafter elect to **Terminate the Grant Agreement** by written notice to the Donor, effective upon notice

- University rights upon termination of the Grant Agreement by the University:
 - The University has no obligation to expend any University funds to continue the Pearson Institute or Pearson Global Forum;
 - The University is entitled to remove the Pearson name, effective only after the second anniversary of the date of termination
 - The University remains obligated to use all Pearson Funds previously received for the exclusive benefit of the Pearson Institute and the Pearson Global Forum; and
 - The University may pursue other remedies for the Pearson's breach

October 30, 2017

- 90-day cure period for default of Tom Pearson's personal payment obligation expires
- University may thereafter elect to **Terminate the Grant Agreement** (if it has not already done so) by written notice to the Donor, effective upon notice
- Termination has the same effect as noted above

March 31, 2018

- cure period for creation of first definitive operating plan and budget expires

June 5, 2018

- 1-year cure period for all purported University defaults other than Founding Obligations expires

June 30, 218

- cure period for creation of advisory council and appointment of Donor Members expires

September 1, 2019

- 1-year cure period for hiring of final Pearson Chair expires

MEETING TO DISCUSS OPTIONS FOR PEARSON INSTITUTE

AGENDA – June 30, 2017,
3:00pm CT

1. Current state of play - timeline under the Grant Agreement (default and cure periods, etc.)
2. What is the end game?
 - a. Amend existing grant agreement?
 - i. Are we willing to allow for certain concessions in order to reach a revised grant agreement?
 - ii. If so, send revised draft?
 - b. Keep existing funds and wind down?
 - i. What would a Pearson Institute look like for the \$22m we have to date?
 - ii. If so, discuss strategy for suggestion of wind down - UChicago or Pearsons?
 - c. Hold to the terms of existing Grant Agreement (note, this will involve a lot of conflict given the months of discussions by both sides about changes to the Grant Agreement)
 - d. Willingness to be in litigation with Donor
 - e. Negotiating strategy – what positions to take and when
 - f. PR/Communications aspects of a-d above
3. Discuss possible Pearson strategies (financial, legal, media strategies) and University responses
 - a. University's media approach and response to potentially false public allegations from the Pearsons
 - b. How Pearson Funds should be used during this period of dispute and negotiation